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IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

JOSEPH GOLDEN, ANGELO DEITOS, EDWARD JONES, IDA THOMASON, LUTHER PALMER, CAROLINE FORYS, JOSEPH THOMAS, JOHN HOYLE, ARTHUR SALLIS, THELMA SONGER, JOHN W. GALLOWAY and ROGER FARRAR, on behalf of themselves and a class of persons similarly situated,

Petitioners,

v.

KELSEY-HAYES COMPANY and HAYES WHEELS INTERNATIONAL, INC.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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PETITIONERS' REPLY BRIEF

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PETITIONERS' REPLY BRIEF

Stripped of its irrelevancies and gratuitous attacks, Respondents' primary response in their Brief in Opposition is that there is no right to a jury trial in § 301 actions to recover collectively bargained benefits when there is an appended ERISA claim. This is a rather remarkable, and unhelpful, submission at this stage in the proceedings, since the court below *rejected* this argument summarily (Pet. App. 19a-20a, n.11) and no other federal appellate court has accepted it.

Respondents' goal is to obcuscate the important constitutional principle at stake here. But, the unalterable fact remains—absent direction from this Court now, the current split in Seventh Amendment jurisprudence created by the panel majority below will sow confusion in trial courts in all civil actions where a request for discretionary injunctive relief is added to a legal claim for damages.

It is necessary to first briefly refocus the inquiry here on its proper subject. The collective bargaining agreements between Kelsey-Hayes and the UAW obligate Kelsey-Hayes to provide retirees with medical benefits during their retirement. The retirees assert that these contractual provisions require that the benefits be maintained during their *entire* retirement, i.e. until their death. Respondents belatedly claim that those contractual provisions, read in conjunction with general durational language of the agreements, permit them to modify those benefits. The jury will therefore be required to interpret the agreements to determine the intended duration of the promise for retiree medical benefits.

Count One of the Complaint was brought pursuant to Section 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. § 185(a), which provides for "[s]uits for violation of contracts between an employer and a labor organization . . . ." Count Two was brought under § 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B), "to recover benefits due" and "to enforce . . . rights under the terms of the plan."

Settled legal principles define this litigation. In enacting § 301, Congress authorized federal courts to develop substantive federal common law, based on federal labor policy, to be applied to the enforcement of labor contracts. *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 456 (1957). This federal common law contemplates contract actions by retirees to recover negotiated medical benefits. "Under established contract principles, vested retirement rights may not be altered without the pensioner's consent. . . . The retiree, moreover, would have a federal remedy under § 301 of the Labor Management Relations Act for breach of contract if his benefits were unilaterally changed." *Chemical Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 181 n.20 (1971) (citations omitted).

Count One of the Complaint presents precisely that type of "federal remedy under § 301 . . . for breach of contract." That Count sought *inter alia*, "damages equal to all costs and expenses sustained by class members and eligible dependents as a result of [Kelsey-Hayes'] refusal to provide health care benefits negotiated by Kelsey-Hayes and the [Union]" and described the types of out-of-pocket costs that would be incurred by retirees as a result of Kelsey-Hayes' breach of contract.

Count Two was brought under § 502(a)(1)(B) of ERISA and sought identical relief.

The retirees also sought, and obtained, a preliminary injunction requiring Kelsey-Hayes to maintain their medical benefits without modification during the litigation.[1] No trial has been scheduled.

The district court struck the retirees' jury demand and the Sixth Circuit denied the retirees' mandamus petition to reinstate it. The Sixth Circuit held that the parallel ERISA Count did *not* deprive the retirees of the right to a jury trial on the contract-enforcement issues, but that

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[1] The retirees also seek a permanent injunction. Obviously, no decision on that request will be made until the jury's determination of the merits of the retirees' contractual claim.

the preliminary injunction, and the alternative prayer for a permanent injunction, *did* do so. Oddly, Respondents argue more strenuously that the court below was *wrong* in failing to strike the jury demand based on the presence of the parallel ERISA Count, than that it was *right* in striking the jury demand because of the claim for injunctive relief. The analysis advanced in the Petition—that two dramatically different readings of the dicta from *Teamsters v. Terry*, 494 U.S. 558 (1990) have developed in the circuits on an important and recurring question of constitutional dimensions (Pet. 8-9)—stands unrefuted.

1. Rather than defend the Sixth Circuit's decision on its own terms, Respondents assert that the present breach of contract case is an equitable action for breach of trust. (Resp. Br. 7-16). Respondents' theory, unsupported by law or logic, is that ERISA has somehow superseded contract actions under § 301 when those actions are based on collectively bargained "welfare benefit plans" that are also subject to ERISA.

The Sixth Circuit rejected this argument summarily. (Pet. App. 20a, n.11). An identical argument was rejected in *Stewart v. KHD Deutz of America Corp.*, 75 F.3d 1522, 1526-27 (11th Cir. 1996).[2] No federal appellate decision of which Petitioners are aware has reached the result championed by Kelsey-Hayes. ERISA itself, of course, does not support this theory. Section 514(d) specifically provides that nothing in ERISA "shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States . . . or any rule or regulation issued under any such law." 29 U.S.C. § 1144(d).

The cases cited by Respondents in support of its unique theory involve a variety of unrelated issues, mainly concerning suits by or against pension plan trustees and

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[2] In *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603, 604 (7th Cir.) (en banc), *cert. denied*, 114 S. Ct. 291 (1993), the lead opinion noted that ERISA provides an alternative jurisdictional basis to § 301, "but . . . has little bearing on the issues in contention."

fiduciaries in the context of multi-employer pension plans. (Resp. Br. 9-10). There is no question that certain actions involving pension benefits, even benefits created by collective bargaining, are equitable in nature. Thus, cases cited by Respondents which address denial of benefits by trustees under the terms of a plan,[3] breach of fiduciary duties,[4] or miscellaneous matters regarding fund trustees generally,[5] may well implicate traditional equitable principles. Those cases are not at all apposite here where Respondents, acting in a corporate capacity, breached the labor contract by changing collectively bargained medical benefits without the consent of the retirees.[6] This was a contract action under § 301 before ERISA, *Chemical Workers v. Pittsburgh Plate Glass, supra,* and it remains a contract action under § 301 for which ERISA provides an alternate jurisdictional basis.

Respondents cite *Steelworkers v. Connors Steel Co.,* 855 F.2d 1499 (11th Cir. 1988), *cert. denied,* 489 U.S. 1096 (1989), and *Steelworkers v. New Jersey Zinc Co., Inc.,* 828 F.2d 1001 (3d Cir. 1987) for the proposition that an action under § 301 "to recover benefits is equitable in nature." Neither case says anything of the sort. In *Con-*

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[3] *Porter v. Central States Pension Fund,* 98 L.R.R.M. (BNA) 3210 (N.D. Iowa 1978); *Davis v. Huge,* 91 L.R.R.M. (BNA) 2234 (E.D. Ky. 1975); *Sichko v. Lewis,* 191 F. Supp. 68 (W.D. Pa. 1960).

[4] *Varity Corp. v. Howe,* 116 S. Ct. 1065 (1996); *Nedd v. Mine Workers,* 556 F.2d 190 (3d Cir. 1977); *Local 92, Ironworkers v. Norris,* 383 F.2d 735 (5th Cir. 1967).

[5] *Milwaukee Brewery Workers' Pension Fund v. Jos. Schlitz Brewing Co.,* 115 S. Ct. 981 (1995) (interest accrued under Multiemployer Pension Plan Amendment Act); *Central States Pension Fund v. Central Transport, Inc.,* 472 U.S. 559 (1985) (employer audit by trustees); *Franchise Tax Board v. Construction Laborers Trust,* 463 U.S. 1 (1983) (suit by state against trustees to collect personal income taxes); *NLRB v. Amax Coal Co.,* 453 U.S. 322 (1981) (trustees not within definition of employers under NLRA).

[6] *Adams v. Avondale Industries, Inc.,* 905 F.2d 943, 949 (6th Cir. 1990) (citing cases) (employer's decision to modify welfare benefits not judged by fiduciary standards).

nors, the Eleventh Circuit merely held that § 301 does not permit recovery of "extra-contractual compensation and punitive damages." 855 F.2d at 1510. In *New Jersey Zinc,* the Third Circuit did not even reach that issue because the union there "failed to preserve" it. 828 F.2d at 1004-5.

Respondents cite no case which holds that ERISA supersedes or replaces § 301 as a general matter. Cases which Respondents do not cite specifically hold that ERISA does *not* supersede § 301 even for pension claims, when the benefits sought are in excess of those guaranteed under ERISA. *Steelworkers Local 2116 v. Cyclops Corp.,* 860 F.2d 189, 197 (6th Cir. 1988); *UAW v. Keystone Consolidated Industries, Inc.,* 793 F.2d 810, 814 (7th Cir.), *cert. denied,* 479 U.S. 933 (1986); *Murphy v. Heppenstall Co.,* 635 F.2d 233, 239 (3d Cir. 1980), *cert. denied,* 454 U.S. 1142 (1982).[7] Of course because ERISA "does not regulate the substantive content of welfare benefit plans," *Metropolitan Life Ins. Co. v. Massachusetts,* 471 U.S. 724, 732 (1985), there is no rationale whatsoever supporting Respondents' theory that courts should develop a new federal common law for collectively bargained benefits under ERISA. It is not a coincidence that every circuit to address the specific

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[7] Respondents cite *Steelworkers v. United Engineering, Inc.,* 52 F.3d 1386 (6th Cir. 1995), in support of a similar argument that ERISA "precludes previously-existing cause[s] of action implied from LMRA § 301." (Resp. Br. at 16). *United Engineering* addressed recent amendments to ERISA which provide that the Pension Benefit Guaranty Corporation (PBGC) has the exclusive authority over supplemental pension benefits. Because of that exclusive grant of authority to the PBGC, the Sixth Circuit dismissed the union's direct contract claim while noting that before Congress enacted the amendments, the field had been addressed by the federal common law of § 301. 52 F.3d at 1394. Nothing in that case even suggests that ERISA similarly bars attempts by retirees to enforce contractual promises regarding medical benefits, which ERISA does not substantively regulate and over which the PBGC has absolutely no role.

question has concluded that retirees seeking to enforce negotiated medical benefits may proceed under § 301. *See e.g. Stewart v. KHD Deutz of America Corp.*, 75 F.3d 1522, 1526 (11th Cir. 1996); *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603, 604 (7th Cir.), *cert. denied*, 114 S. Ct. 291 (1993); *Armistead v. Vernitron Corp.*, 944 F.2d 1287, 1298 (6th Cir. 1991); *Paperworkers v. Champion International Corp.*, 908 F.2d 1252, 1255-56 (5th Cir. 1990); *Keffer v. H.K. Porter Co., Inc.*, 872 F.2d 60, 62 (4th Cir. 1989).

2. Respondents claim that, in *Teamsters v. Terry*, 494 U.S. 558 (1990), the Court rejected the principle that § 301 actions are analogous to "breach of contract, and thus legal." (Resp. Br. at 10). Respondents are absolutely wrong. In *Terry*, the Court addressed a "hybrid" duty of fair representation/breach of contract action. In such an action, the employee is required to prove "two facts to recover money damages"—employer breach of the labor agreement and union breach of its duty of fair representation. 494 U.S. at 564. During the first phase of its Seventh Amendment analysis, the Court concluded that "[t]he § 301 issue . . . is comparable to a breach of contract claim—a legal issue." 494 U.S. at 569-70. The Court determined that the *other* element—the fair representation claim—was equitable. Faced with both an equitable and a legal element in a single cause of action, the Court found itself in "equipoise as to whether [the employees] are entitled to a jury trial." 494 U.S. at 570.

Here, there is no "equipoise." There is no equitable element. There is only a straight "breach of contract claim—a legal issue." As the Court stated in *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 477 (1962), "it would be difficult ao conceive of an action of a more traditionally legal character."

Respondents berate *Petitioners* at every turn, claiming, *inter alia*, that they ignore the kind of contract involved

here,[8] that the contracts have expired[9] and that Petitioners themselves are not parties to the contracts.[10] (Resp. Br. 11-14). The issue presented for review here is clearly framed by the decision of the Sixth Circuit. This Court should not have to cut through the thicket of Respondents' arguments in order to refocus on this distinct and important issue. Of course, Respondents' attempt to obscure the issue is, in any event, unavailing. The Seventh Amendment analysis of the panel majority below, based on a misreading of *Terry*, is not limited to § 301 actions for collectively bargained benefits. It applies universally to all actions where a legal claim for damages is supplemented by a request for equitable relief. Unless this Court resolves the conflict, based upon conflicting readings of *Terry*, lower courts will have to wrestle with the conflict in innumerable situations.

3. More importantly, Respondents make no real effort to reconcile the split in the circuits.

Respondents' attempt to distinguish the conflicting decision in *Crocker v. Piedmont Aviation, Inc.*, 49 F.3d 735 (D.C. Cir.), *cert. denied*, 116 S.Ct. 180 (1995) is infected by Respondents' erroneous assertion that the parallel ERISA Count has somehow deprived the court of its traditional § 301 jurisdiction. Thus, Respondents claim that *Crocker* is distinguishable because the statute at issue there, "unlike ERISA, did not confine the plaintiff to

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[8] It is exactly the same "kind of contract" addressed by the Seventh Circuit in *Senn v. United Dominion Industries, Inc.*, 951 F.2d 806 (7th Cir. 1992), *cert. denied*, 113 S.Ct. 2992 (1993) and *Stewart v. KHD Deutz of America Corp.*, 75 F.3d 1522 (11th Cir. 1996) which constitute the conflict in the circuits on this issue.

[9] This assertion, of course, merely *raises*, rather than answers, the question of whether the parties intended the obligation to provide retiree medical benefits here to *survive* th expiration of the contracts.

[10] Individuals as well as labor organizations can bring actions under § 301. *Smith v. Evening News Ass'n*, 371 U.S. 195, 200 (1962). Retirees can sue under § 301 when their former employer alters their medical benefits. *Chemical Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 181 n.20 (1971).

equitable remedies." (Resp. Br. at 20). But neither the court below—nor any other appellate court—has held that § 301, when invoked to enforce contractual promises by an employer to provide retiree medical benefits, confines a plaintiff to equitable remedies. In fact, Congress saw damages as a principal form of relief available under § 301. *See generally Textile Workers v. Lincoln Mills,* 353 U.S. at 485-546 (1957) (setting forth legislative history).

Respondents do not even attempt to harmonize the Seventh Circuit's decision in *Senn v. United Dominion Industries, Inc.*, 951 F.2d 806 (7th Cir. 1992), *cert. denied,* 113 S.Ct. 2992 (1993). Instead, Respondents argue that the decision in *Senn* is dicta. The Seventh Circuit apparently did not consider it so. The first of the three issues that the "appeal raise[d]" was "[w]hether the trial court erroneously permitted a jury trial" on the question of whether the labor agreements there permitted the employer to modify the retirees' medical coverage. 951 F.2d at 813. The Seventh Circuit specifically held that, even though the retirees were "primarily seeking injunctive relief," the Seventh Amendment guaranteed the right to a jury trial because "[i]t is well settled that when legal and equitable relief are separately authorized by statute, and the 'legal claim is joined with [the] equitable claim, the right to jury trial on the legal claim, including all issues common to both claims, remains intact. The right cannot be abridged by characterizing the legal claim as 'incidental' to the equitable relief sought.' " 951 F.2d at 813-14 (quoting *Tull v. United States,* 481 U.S. 412, 424-425 (1987) which quoted, in turn, *Curtis v. Loether,* 415 U.S. 189, 196 n.11 (1974). This holding is in direct conflict with the decision below, where the jury trial was lost precisely because the legal claim was characterized as "incidental" to the equitable claim. (Pet. App. 24a).

Other courts have not considered *Senn* to be dicta. The Eleventh Circuit in *Stewart v. KHD Deutz of America Corp.*, 75 F.3d 1522, 1528 (11th Cir. 1996), "joined

the Seventh Circuit in holding that plaintiffs are entitled to a jury trial in hybrid LMRA/ERISA actions." The district court in *In re Unisys Savings Plan Litigation,* 148 L.R.R.M. (BNA) 2405 (E.D. Pa. 1995), relied squarely on *Senn* in denying the employer's motion to strike the jury demand in the § 301 count, after rejecting the employer's claim that ERISA displaced § 301. The employer did not appeal. *In re Unisys Savings Plan Litigation,* 74 F.3d 420, 432 n.8 (3d Cir. 1966).

Respondents concede that the decision below conflicts with *Stewart v. KHD Deutz of America Corp.* (Resp. Br. 24). They claim, however, that it is unlikely to recur since the Eleventh Circuit decides fewer retiree medical benefit cases.

In fact, the significance of the confusion in the lower courts cannot be so easily dismissed. As the law stands now, jury trials are available in the Seventh and Eleventh Circuits in § 301 actions involving retiree medical benefits. Jury trials are not available in identical circumstances in the Sixth Circuit which, for demographic reasons, has had more retiree health litigation than any other circuit. And these disparate approaches are not limited to cases arising under § 301 or to circuit court boundaries. The Sixth Circuit's misreading of *Terry* is that jury trials are not available any time that a court characterizes the legal issue as merely "incidental" to the equitable issue.

Finally, this confusion is not limited to the courts of appeals. The two leading commentators on civil procedure have developed divergent approaches to this general issue, reflecting the different approaches that have now developed in the lower courts. Thus, Professors Wright and Miller conclude that "it appears that the constitutionally required solution in the situations in which a single issue may be either legal or equitable depending on the remedy awarded is to have the jury present to decide the issue, even though the court then may have to determine for itself whether to grant relief of a type historically equitable." Wright & Miller, *Federal Practice*

and Procedure: Civil 2d, (West 1994) § 2306, pp. 74-75. Even more to the point, "it now seems clear that the right of the parties to have a jury trial upon demand cannot be defeated by the fact that the claim for specific performance is joined with the claim for damages." *Id.* § 2309, p. 86. On the other hand, Professor Moore has concluded that "[w]hen the plaintiff seeks specific performance, and alternatively damages, the question is . . . complicated. . . . Since the plaintiff has expressed a preference for specific performance, certainly he cannot complain that the trial of the equitable claim has deprived him of a jury trial on the issue of breach." *Moore's Federal Practice,* ¶ 38.21, p. 38-193.

If, in the unlikely event that, by the dicta in *Terry,* the Court intended to overrule *Beacon Theatres, Inc. v. Westover,* 359 U.S. 500 (1959), *Dairy Queen* and *Curtis v. Loether,* while re-emphasizing the fundamental importance of the Seventh Amendment right ot a jury trial, lower courts are entitled to be specifically informed at the earliest possible moment. That moment is when, as now, a conflict in the courts of appeals first clearly appears. The passage of time will only spread the confusion and result in the denial of a fundamental constitutional right to intervening litigants.

Seventh Amendment jurisprudence is currently in disarray on the question presented by the decision below. It is time for this Court to dispel the confusion that now prevails in the circuits on this important constitutional question.

CONCLUSION

For the foregoing reasons, and those contained in the Petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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